IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13484 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JENTIBHAI CHITABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT TO BE SERVED THROUGH THE & 3 - Respondent(s)

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Appearance :
MR CHIRAG B PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.
MR MANISH R BHATT for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 15/03/2007

ORAL JUDGMENT

1. Considering the scope of the controversy between the parties, the petition has been taken up for final hearing and disposal. Rule. The learned advocates appearing for respective respondents waive service.

2. The petition has been filed praying for following reliefs:

> *8. The petitioner, therefore, most humbly prays to this Hon'ble Court that:-*
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> *(A) Your Lordships be pleased to issue writ of certiorari or any other appropriate writ order or direction, quashing and setting aside the order passed by the Respondent No.3 dated 06/10/2004 at Annexure-"A" to the petition, judgment and order passed by the respondent No.2 dated 16.08.2005 at Annexure"B" and also the order passed by the respondent No.1 dated 22.05.2006 at Annexure"C" to the petition;*

(B) During the pendency admission and final disposal of this petition, Your Lordships be pleased to stay the further operation and implementation of the order passed by the respondent No.3 dated 06.10.2004 at Annexure-"A", judgment and order passed by the respondent No.2 dated 16.08.2005 at Annexure"B" and order passed by the respondent No.1 dated 22.05.2006 at Annexure"C" to the petition;

(C) Cost of this petition be provided for;

(D) Be pleased to grant such other and further relief/s as may be deemed just and proper in the facts and circumstances of the case;

3. On 01.08.2004, respondent No.4-Society passed a resolution at the Annual General Meeting held on the said day whereunder the petitioner was expelled from the membership of the Society in exercise of powers under Section 36 of the Gujarat Co-operative Societies Act, 1961 (the Act). The petitioner had been served a show cause notice on 22.07.2004 and the petitioner tendered his reply dated 30.07.2004 which

came to be considered by the Society at the Annual General Meeting. After the resolution dated 01.08.2004, the Society forwarded the resolution to the District Registrar for approval as required by provisions of Section 36 of the Act. Vide Communication / Order dated 06.10.2004, the District Registrar accorded his approval. The petitioner went in appeal under Section 153 of the Act before the Additional Registrar (Appeals) Co-operative Societies, Gujarat State. The said appeal, being Appeal No.157 of 2004, came to be dismissed vide order dated 16.08.2005 by the Appellate Authority. The petitioner carried the matter further by way of Revision before the Additional Secretary, Agriculture and Co-operative Department. The Revision Application No.184 of 2005 came to be rejected vide order dated 22nd May, 2006.

4. The learned advocate has challenged all the three orders principally on the ground that the entire proceedings are vitiated in absence of any reasoning in the order dated 06.10.2004 made by the District Registrar. According to him, in absence of any reasons in the order made by the District Registrar the statutory right of appeal was idle formality and the petitioner was deprived of exercising the statutory right. In support of the propositions, he has placed reliance on

observations made by the Appellate Authority wherein while passing the order the Appellate Authority has observed that it would have been better and more just if the District Registrar had assigned reasons while granting approval to the resolution of the Society. However, on merits, the Appellate Authority did not agree with the petitioner and came to the conclusion that on facts the resolution was rightly passed by the Society. The learned advocate for the petitioner places reliance on decision of this Court in case of *Gordhanbhai N.Vaghela V/s. Maruti Co.Op.Housing Society & Ors.* 2002(3) GLH 747 to submit that an expulsion of a member adversely affects the rights of the member and is a serious action which attaches stigma; that, therefore, before passing the resolution under Section-36 of the Act, the Society must observe principles of natural justice and exercise the powers of expulsion only as a last resort, more particularly where the Society is a Co-operative Housing Society.

4(A). The next decision on which reliance was placed was in the case of *Deepakkumar Keshavlal Patel & Anr. V/s. State of Gujarat & Ors.* 2003(4) GLR 3184 in support of the proposition that before granting approval to resolution expelling a member, the District Registrar is required to take

into consideration merits of the matter and has to consider not only whether procedural formalities were observed by the Society.

4(B). The Apex Court decision in case of *Messrs, Mahabir Prasad Santosh Kumar V/s. State of U.P. & Ors.* 1970(1) SCC 764 was relied on with special reference to observations made in paragraph No.5 of the Judgment to submit that a right of appeal can be effectively exercised only if reasons are recorded by the Authority and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons, the right to appeal is an empty formality.

4(C). Another Apex Court decision in case of *Harinagar Sugar Mills Ltd. V/s. Shyam Sunder Jhunjhunwalal and Ors.* AIR 1961 SC 1669 was relied on for the proposition that if the order against which an appeal is provided, does not assign reasons, the higher forum will not be able to ascertain whether the authority did or did not transgress limits of the powers available to the authority.

4(D). Certain extracts from Chapter-X of the Book *"Interpretation of Indian Statute"* by *J. Swarup* were relied

upon to explain the scope of a proviso in support of the proposition that if the main provision does not contain a certain requirement, by process of interpretation the same cannot be derived from a proviso by implication.

4(E). Inviting attention to the provisions of Section 36 of the Act, it was submitted that Sub-Section (1) of Section 36 of the Act permitted a Society to expel a member provided it was found that the acts of the member concerned are detrimental to the proper working of the Society. He read extensively from the show cause notice issued by the Society as well as the reply tendered by the petitioner to submit that the Registrar as well as the Appellate and the Revisional Authority had failed to record findings that the acts of the petitioner were detrimental to the interest of the Society. That in fact the explanation tendered by the petitioner had not been considered either by the Society or the Authorities. He, therefore, urged that the impugned orders made by the District Registrar, and confirmed by the Appellate and Revisional Authorities are required to be quashed and set aside.

5. The learned advocate appearing for the respondent-Society, narrated the facts to contend that the Society had complied with the requirements of provisions of Section 36 of the Act before passing the resolution dated 1st August, 2004. The resolution had been passed by majority as required, in fact it was a unanimous resolution of the members present and voting at the General Body Meeting. The District Registrar had accorded an opportunity of hearing to the parties, considered the reply / explanation filed by the petitioner and thereafter, approved the resolution. The order of the District Registrar came to be confirmed by both the Appellate and the Revisional Authorities, recording concurrent findings after hearing the petitioner at all the stages.

5(A). According to the learned advocate the requirement of Section 36 of the Act can be enumerated thus:-

a. The resolution has to be passed by a three fourth majority of the members present and voting at a general meeting.

b. The purpose of the meeting is to consider the expulsion of a member for acts detrimental to the proper working of the society.

c. The member concerned is to be given an opportunity of representing his case to the general body.

d. The resolution is submitted to the registrar for his approval and so approved by him.

e. Approval / Disapproval to be communicated by the registrar to the society within a period of three months from the date of submission to him.

f. If there is no communication from the registrar, the resolution shall be effective.

5(B). He, therefore, urged that when one reads the requirements of Section 36 with the first proviso the District Registrar is not required to sit in appeal and to conduct the proceedings like an appellate authority and consider merits of the matter, but as an Approving Authority the role is limited. He has placed reliance on following two decisions in this connection.

(i) Miheer H.Mafatlal V/s. Mafatlal Industries Ltd. (1996) 87 Company Cases 792.

(ii) Nirma Industries Ltd. V/s. Deputy Commissioner of Income-Tax (2006) 283 ITR 402 (Guj)

5(C). The next limb of argument was to the effect that the procedure prescribed by Section 36(1) of the Act was summary procedure, there being no power to compel attendance of witness or to record evidence. Hence, the District Registrar as an Approving Authority was not required to make a reasoned order.

5(D). Inviting attention to the second proviso to Section 36(1) of the Act, it was submitted that the said proviso mandates that the resolution shall be effective in case the Approving Authority does not communicate the decision of approval or disapproval. In other words, the Authority becomes *functus officio* after the stipulated period of 90 days. In this context, reliance was placed on Apex Court decision in case of *The Balasinor Nagrik Co-operative Bank Ltd. V/s. Babubhai Shankerlal Pandya and Ors.* AIR 1987 SC 849, and in the case of *B.B.Chibber V/s. Anandlok Co-Op. Housing Society Ltd.* AIR 2001 Delhi 348.

5(E). Repealing the contention made on behalf of the petitioner that the District Registrar has to make a reasoned order it was submitted that this would make the second proviso redundant and no part of provision can be treated as *otiose*. For this purpose, reliance was also placed on the Apex Court decision in case of *Nathi Devi V/s. Radha Devi Gupta* AIR 2005 SC 648. Elaborating the submission, it was submitted that the contention of the petitioner, if accepted, would tantamount to adding words both in the first and the second proviso to Section 36 (1) of the Act and this was not open to the Court.

5(F). A further contention was raised that the order by the District Registrar *per se* does not result in civil or evil consequences in so far as an expelled member is concerned, but it is the decision of the Society. Hence, it is the decision of the Society which has to be tested in relation to violation or otherwise of principles of natural justice.

5(G). Lastly, it was submitted that even a non speaking order granting approval did not call for judicial interference in a case where the findings can be supported by evidence on

record. He relied on following three decisions of the Apex Court.

1. Union of India v. E. G. Nambudiri- AIR 1991 SC 1216

2. State Bank of Bikaner and Jaipur v. Prabhu Dayal Grover AIR 1996 SC 320

3. AIR 1984 SC 273 "K. L. Tripathi v. State Bank of India"

6. The learned AGP, Ms.Natani, appearing on behalf of the Authorities submitted that the requirement of the provisions, namely, resolution by the Society having been made by the stipulated majority, granting an opportunity of hearing to the member concerned, had been complied with and the Registrar had taken into consideration all the facts and being convinced that resolution was correct had granted approval. The learned AGP, therefore, supported the order made by the Registrar as confirmed in appeal and revision.

7. Section 36 of the Act reads as under:-

36. Expulsion of members:-

1. A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for

the purpose, expel a member for acts which are detrimental to the proper working of the society:

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is submitted to the Registrar for his approval and approved by him.

Provided further that, the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective.

2. No member of a society who has been expelled under Sub-Section (1) shall be eligible for readmission as a member of that society, or for admission as a member of any other society, for a period of two years from the date of such expulsion:

Provided that, the Registrar may, in special circumstances, sanction the readmission or admission, within, the said period, of any such member as a member of the said society or of any other Society, as the case may be.

8. On a plain reading it becomes apparent that Sub-Section (1) of Section 36 of the Act permits a Society to expel a member whose acts are found detrimental to the proper working of the society; the society has to expel the member by

a resolution passed at the General Meeting of the Members held for the purpose, namely, the General Meeting of Members has to be held for the purpose of expulsion of a member; and such resolution has to be passed by atleast three fourth majority of all the members present and voting at such General Meeting. But, prior to the passing of the resolution, the first proviso enjoins that the Society must give an opportunity to the member concerned of representing his case to the General Body, and only thereafter, the resolution shall be valid. In absence of such an opportunity a particular resolution shall not be valid. The next requirement flows from the latter portion of the first proviso whereunder it is provided that no resolution shall be effective unless (a) the Society submits such resolution to the Registrar for his approval, and (b) the Registrar approves the resolution.

9. Going further, the second proviso provides an embargo along with a period of limitation for granting approval or disapproval by the Registrar. The second proviso stipulates that the approval or disapproval of the Registrar shall be communicated to the Society within a period of three months from the date of receipt of submission of the resolution by the Society, and in the event the Registrar fails

to communicate within the specified period, the resolution shall be effective.

10. Thus on a conjoint reading of Sub-Section (1) of Section 36 of the Act and the two provisos thereunder the legislative scheme that unfolds is that once the society has complied with the requirement of granting an opportunity of hearing to the member concerned and a resolution is passed at a meeting held for such purpose by the prescribed majority, the resolution is valid. However, the latter part of the first proviso does not talk of the validity of the resolution being subject to approval by the Registrar. The said portion of the first proviso only requires and states that on being granted approval the valid resolution become effective. In other words, what is provided on a conjoint reading of the first proviso and Sub-Section (1) of Section 36 of the Act is that once the requirements are complied with by the Society a valid resolution comes into existence and only the implementation thereof stands deferred, awaiting approval or disapproval by the Registrar. It is necessary to note that the power of Registrar to grant approval or disapproval can be exercised only within the stipulated period of 90 days from the date of receipt of the resolution from the Society. Once the

period of 90 days is over and the Registrar has failed to either record his approval or disapproval and communicate the same to the Society the Registrar is divested of his powers to grant approval or disapproval. In case of Balasinor Nagarik Co-operative Bank Ltd., the Apex Court was called upon to deal with the provisions of Section 36(1) of the Act with special reference to the second proviso in the following circumstances.

10(i). The Society before the Apex Court expelled a member and forwarded the resolution for approval to the Registrar. The resolution was dated 30th September, 1982, the Society forwarded it on 6th October, 1982 and in absence of any response, on 24th January, 1983 the Society wrote to the Registrar that the resolution had become effective as the Registrar had failed to communicate his approval or disapproval. The Registrar did not agree with the Society and after hearing the parties recorded his disapproval vide order dated 19.09.1983. The matter travelled upto Apex Court and this is what has been stated by the Apex Court :

> *“It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally*

applicable to different parts of the same section. Keeping that in view, we have no doubt in our mind as to the purport and effect of sub-s. (1) of S. 36 of the Act which deals with the power of expulsion of a member for acts which are detrimental to the proper working of the society. It also provides for the manner of the exercise of such power. The exercise of the power of expulsion of a member for his acts which are detrimental to the interests of the society conferred by sub-s. (1) of S. 36 is made subject to the fulfilment of the conditions prerequisite, namely, it has to be by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for that purpose. There is no doubt or difficulty as to the precise function of the two provisos appended to sub-s. (1) of S. 36 of the Act. The power of expulsion of a member by a society under sub-s. (1) of S. 36 is made subject to a defeasance clause engrafted in the first proviso. It interdicts that : (1) no such resolution for expulsion of a member passed under sub-s. (1) of S. 36 of the Act shall be valid unless the member concerned is given an opportunity of representing his case to the general body, and (2) unless it is submitted to the Registrar for his approval and approved by him. Condition No. 2 keeps the resolution for expulsion of a member in abeyance.

5. Just as the first proviso construed in the context of the substantive provision contained in sub-s. (1)

of S. 36 of the Act is meant to accept (except) or qualify the power of expulsion of a member conferred in the main enacting part and presumed to be necessary, the second proviso is in the nature of a fetter on the power of the Registrar to accord his approval or disapproval. Such approval or disapproval in terms of the second proviso has to be communicated to the society within a period of three months from the date of submission of the resolution passed under sub-s. (1) of S. 36 of the Act for his approval. On a combined reading of the two provisos, the legal consequence that ensues is this. After the society communicates, a resolution for the expulsion of a member for acts detrimental to the working of the society passed in the manner required by sub-s. (1) of S. 36 to the Registrar for his approval under the first proviso, there is a duty cast on the Registrar to exercise his power of according approval or disapproval within a period of three months from the date of such submission, as provided by the second proviso. According to its plain terms, the second proviso places a limitation on the powers of the Registrar. It appears to us that the obvious intention of the Legislature was that once the period of three months stipulated expires. the Registrar becomes functus officio and his power to accord approval or disapproval to the resolution passed by the society for expulsion of a member under sub-s. (1) of S. 36 of the Act lapses. The District Registrar therefore had no jurisdiction to set aside the resolution passed by the appellant-

society under subs. (1) of S. 36 for the expulsion of respondent No. 1 from the primary membership of the society after the expiry of a period of three months from October 6, 1982 i.e. the date of submission of the resolution. The construction placed by the learned single Judge on sub-s. (1) of S. 36 of the Act read with the two provisos thereto is patently erroneous and cannot be sustained".

11. In this context, the contention raised on behalf of the petitioner by placing reliance on decision of this Court in the case of Dipakkumar Keshavlal Patel (supra) may be examined. It has been held that: *"Since appropriate reasoning is not given by the District Registrar on the aforesaid aspect, and except, merely dealing with the procedural part of holding the meeting, place of meeting, giving opportunity to the petitioners to defend their case, nothing further has been considered on merits about availability of the material for coming to the conclusion about the alleged act of the petitioners, in my view, the matter is required to be sent back to the District Registrar to consider the aforesaid aspect".*

12. The aforesaid decision cannot carry the case of the petitioner any further for the simple reason that in the first instance the Apex Court decision in case of *Balasinor Nagarik*

Co-operative Bank Ltd. (supra) has not been cited before the Court and the Court had no occasion to consider the same; secondly the second proviso to Section 36(1) of the Act also has not been considered by the Court. This fact becomes evident when one considers what is referred to in paragraph No.17 of the Judgment. The Court has relied upon the observations made by the Bombay High Court in the case of *Vishwajit Co-operative Housing Society V/s. P.P.Damle* 1976 (12) CLG 14 and observed that provisions of Section 35(1) of the Maharashtra Co-operative Society Act, 1960 are *pari materia* with the provisions of Section 36 of the Act. This is only partly correct. When both the provisions are compared, it becomes evident that the Maharashtra Act does not contain the second proviso which is found in the Gujarat Act. Hence, the said decision rests on the facts of that case and does not operate as a precedent laying down the scheme of entire Section 36 of the Act as enunciated by the Apex Court.

13. The contention raised on behalf of the petitioner may be considered from a slightly different angle. If the matter is examined in context of the legislative scheme it becomes apparent that the provision cannot be read so as to provide for assigning of reasons by the Registrar when the

approval is conveyed within the stipulated period of 90 days, while laying down that in the event period of 90 days has expired, as envisaged by the second proviso, the Registrar is not required to assign reasons because he is not empowered to pass an order. That cannot be the legislative intent. The legislature could not have provided for a situation where an authority should assign reasons when it passes an order but is not required to do so when the prescribed period is over and the resolution passed by the society becomes effective even though the Authority does not pass an order. The submission in relation to right of appeal, in this context, cannot support the stand of the petitioner. The appeal filed against a deemed approval on expiry of period of 90 days would be in the same position before the Appellate Authority as in a case where approval is granted without reasons when made within the period of 90 days. The legislature has not provided that there cannot be an appeal against such deemed approval. Thus there cannot be two different criteria for examining the validity of an order and a non-order. Both stand on the same footing. An interpretation which makes the provision workable in both eventualities should be favoured to an interpretation which breaks down in one of the eventualities, rendering a part of the provision redundant.

14. However, there is one caveat. Non assigning reasons per se would not vitiate an order of approval. But the order of approval must, at the same time, reflect that there was an application of mind by the Authority to the material available on record, namely, the resolution passed by the Society, the basis for passing such a resolution, and the explanation of the member concerned as to why such approval should not be granted. This is having regard to the distinction already noted hereinbefore between the validity of the resolution and effectiveness of the resolution.

15. But in a case where the Registrar records his disapproval, he has to assign reasons, howsoever brief. An order of disapproval would result in a situation when a valid resolution made by the Society might have to be taken up for reconsideration by the Society. Therefore, the Society must know as to why the resolution is not to become effective. This is also again subject to the statutory period of 90 days within which period Registrar can convey his disapproval. But on his failure to act within the period of 90 days during which the valid resolution has been kept in suspension, the resolution becomes effective and is required to be implemented, the

Registrar having become *functus officio* as laid down by the Apex Court.

16. The object of the provision has to be borne in mind. The entire legislative scheme goes to show that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the Bye-laws have to be respected and implemented. The underlying idea of Section 36 of the Act is to give precedence to the collective rights of the members of the society when pitted against the individual rights of a solitary member. Of course, the provision has provided adequate safeguards. The section stipulates passing of a resolution by the prescribed majority, and after hearing the member concerned.

17. When a member raises his objection qua a resolution passed by the requisite majority of the society the member must be in a position to show that the resolution is either malafide, or arbitrary or perverse in the fact situation of a case. Only then would the Registrar be empowered to undertake an exercise for the purposes of disapproving the resolution. There could be another situation where the

registrar may intervene; in a case where there is violation of principles of natural justice. However, onus lies on the member concerned to establish such malafides, arbitrariness or perversity qua resolution. The reason is not far to seek. The section provides that once the resolution is passed by the requisite majority after hearing the member concerned the resolution is valid and only the implementation is kept in abeyance and that too for the limited period of 90 days.

18. Therefore, it is not necessary to assign reasons in every case where the registrar accords his approval merely because the consequence of the resolution is to affect the member concerned. To approve means to confirm, to sanction. Approval means the act of approving, granting sanction. Therefore, once the order of approval reflects that the Authority was alive to the issues raised and has considered the same, the Authority need not repeat reasons in the order of approval. In fact, the language employed by the provision does not warrant any passing of an order. The provision only stipulates that an approval has to be communicated to the society; an approval of a valid resolution / decision of the society so as to make it effective.

19. The facts of the case may be examined in light of the aforesaid legal position. Admittedly, the petitioner was served with a show cause notice dated 26th July, 2004 whereby the Society made pointed reference to various acts of the petitioner which were detrimental to the interest of the Society. Only by way of illustration one may refer to item No.3 whereunder it was found that in various communications addressed to the Society and its office bearers, the petitioner had made an endorsement that the copies of communication were forwarded to the Deputy Secretary, Revenue Department, Gandhinagar. On the Society having contacted the said Authority, vide communication dated 21.06.2004 the said Authority denied outright having received any such copy of communication from the petitioner. Thus it was found by the Society that there were various acts committed by the petitioner by which the petitioner was making wild allegations and threatening the members of the Society by so called reference to superior authorities to whom in fact no communication had been forwarded.

20. However, what is more material is that in the reply dated 30.07.2004 to the show cause notice of the Society the petitioner has not met with any of the point or points for

which the notice had been issued but has made allegations against various persons, including Secretary of the Society, and failed to deal with the issues raised in the notice. Thereafter, the resolution dated 01.08.2004 came to be passed unanimously. The said resolution had been approved vide communication dated 06.10.2004 by the District Registrar after recording that on receipt of submission of the resolution by the Society, both the parties were heard and the evidence available on record considered. In these circumstances, it is not possible to state that the communication approving the resolution suffers from any legal infirmity. In fact, there are concurrent findings recorded both by the Appellate and Revisional Authority.

21. In the aforesaid circumstances, it is apparent that the decision making process does not suffer from any legal infirmity so as to call for intervention at the hands of this Court in exercise of jurisdiction under Article 226 of the Constitution. Though learned advocate for the petitioner had made submissions in relation to the various allegations leveled by the petitioner against different office bearers of the Society, it is not necessary to enter into any discussion as regards the same as the Court is only required to examine

whether there is a compliance with provisions of Section 36 of the Act, and while complying with the said provisions the decision making process is not vitiated in any manner. For the reasons stated hereinbefore it is not possible to hold so.

22. Before parting it is necessary to record a word of appreciation for the learned junior advocate appearing on behalf of the petitioner considering the effort that has been put-in by the learned advocate.

23. The petition is accordingly rejected. Rule discharged. There shall be no order as to costs.

(D.A.MEHTA, J.)

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